

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

KONRAD GARCIA,

Plaintiff,

v.

RAMONA PERRAULT, et al.,

Defendants.

Case No. 2:15-cv-00419-JR

OPINION AND ORDER

MOSMAN, J.,

On September 26, 2018, Magistrate Judge Paul Papak issued his Findings and Recommendation (F&R) [96], recommending that I GRANT Defendants' Motion to Dismiss [53] without prejudice as to the third and fifth claims in Plaintiff's Second Amended Complaint [69], and otherwise GRANTED with prejudice.¹ Plaintiff objected to the F&R, with specific objection to Judge Papak's findings on claims three through six. Defendants responded, stating that Judge Papak's findings were correct.

¹ Judge Papak stated that claims three and five should be dismissed without prejudice in the discussion section of his F&R but stated that claims three and six should be dismissed without prejudice in his conclusion. Claim six asserts that defendants engaged in a conspiracy. Because and Judge Papak recommended dismissing all claims related to alleged conspiracies with prejudice, I understand Judge Papak's recommendation to be that I dismiss claims three and five without prejudice.

DISCUSSION

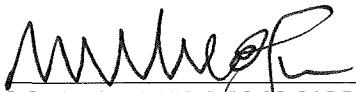
The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

I have reviewed those portions of the F&R to which Plaintiff objected. Upon review, I agree with Judge Papak's recommendation and I ADOPT the F&R [96] in full. Defendants' Motion to Dismiss [53] is GRANTED. Plaintiff's Second Amended Complaint [69] is DISMISSED without prejudice as to the third and fifth claims, and otherwise DISMISSED with prejudice. Plaintiff's Motions for Judgment as a Matter of Law [79, 84, 90] are DENIED as moot.

IT IS SO ORDERED.

DATED this 26 day of December, 2018.


MICHAEL W. MOSMAN
Chief United States District Judge